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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 30th September 2013

No. 11781—IR (ID)-33/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th August 2013 in I. D. Case No. 26 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore-Bhadrak Central Co-operative Bank Ltd., Balasore and their Workman Shri Kanhu Charan Dash was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 26 OF 2010

Dated the 27th August 2013

Present :

Shri P. K. Ray, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The management of .. First Party—Management
the Secretary, M/s Balasore-Bhadrak
Central Co-operative Bank Ltd.,
Balasore.

And

Its Workman, .. Second Party—Workman
Shri Kanhu Charan Dash,
Vill. South Narasinghpur,
P.O. Pratapada, P.S. Nilgiri,
Dist. Balasore.

Appearances :

Shri Namadev Kamila, Auth. Rept.	.. For the First Party Management
Shri K. C. Dash, Workman himself	.. For the Second Party Workman

AWARD

This case has been instituted under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & ESI Department of the Government of Odisha under Section 12 (5) of the Act vide its Letter No. 3845—ID-33/2010-LE., dated the 17th May 2010 with the following schedule :—

“Whether the termination of services of Shri Kanhu Charan Dash, Cadre Secretary, by the management of Balasore-Bhadrak Central Co-operative Bank Ltd., Balasore with effect from the 26th August 1987 is legal and/or justified ? If not, to what relief Shri Dash, workman is entitled ?”

2. The claim of the second party workman is that he was appointed as a Cadre Secretary under Balasore District Central Co-operative Bank Ltd., in the year 1972. While working as such in different service, co-operative societies on 7-2-1986 the management of Balasore-Bhadrak Central Co-operative Bank placed him under suspension and initiated a disciplinary proceeding, the enquiry of which was conducted by one Bank Advocate. It is alleged that the said Advocate without giving him any reasonable opportunity submitted his enquiry report, basing upon which the bank authority also without giving him a chance of personal hearing terminated his service vide bank Order No. 2228, dated the 26th August 1986. Though he preferred appeal the same was turned down on the ground that since he had not deposited the dues established in the domestic enquiry his prayer deserves no consideration. In pursuance to the said letter even if he deposited a sum of Rs. 6,469.65 paise vide Challan No. 395, dated the 7th September 1992 under Annexure IV the authority did not take any steps for his reinstatement even if he has made several representations to that effect. Lastly on his complaint before the labour authorities and on the reference made by the State Government this case has been instituted for adjudication.

3. The first party management in its written statement admitting the appointment of the second party workman as Cadre Secretary in Co-operative Society under the control of the bank has stated that during the performance of his duties he was involved in misappropriation of the funds of the society for which he was placed under suspension vide Order No. 43156, dated the 24th June 1985 and after due enquiry giving all reasonable opportunities for explanation his service was terminated with effect from the 26th August 1987 which he received on 1-9-1987. Though the second party workman subsequently deposited the misappropriated amount in the bank on 7-9-1993 after lapse of more than seven years from the date of termination of his service and applied for his reinstatement, the decision of the Managing Committee of the bank taken on 24-12-1993 was communicated to the Dy. Registrar of Co-operative Society, Balasore for information of the second party workman. Therefore, the second party workman is not entitled to any relief.

4. The second party workman in his rejoinder reiterating the stand taken by him, has stated that the termination of his service is improper and disproportionate to the charges of misconduct and hence claims for his reinstatement with full back wages.

5. In the aforesaid premises, the issues framed are as follows :

ISSUES

- (i) "Whether the domestic enquiry conducted against the workman is fair and proper ?
- (ii) Whether the termination of services of Shri Kanhu Charan Dash, Cadre Secretary by the management of Balasore-Bhadrak Central Co-operative Bank Ltd., Balasore with effect from the 26th August 1987 is legal and/or justified ?
- (iii) If not, to what relief Shri Dash workman is entitled ?"

6. *Issue No. (i)*—In this case the termination has been made followed by one domestic enquiry. This forum has taken up the question of fairness of the domestic enquiry as a preliminary issue and after going through the evidence adduced on behalf of both the parties on the preliminary issue, decided on 3-3-2012 that the enquiry was improper and prejudicial to the workman. Hence, the management was given further chance to adduce evidence to substantiate its case. In the aforesaid matter while the management adduced one witness and filed documents marked Exts. A to G. The second party workman examined himself and filed documents marked Exts. 1 to 11.

7. *Issue No. (ii)*—The second party workman was terminated on the allegation of misappropriation of funds on the basis of the report of the Enquiry Officer. Admittedly the second party workman after adjusting his dues deposited a sum of Rs. 6469.65 paise towards the said defalcation amount in the first party management. The claim of the second party workman is that after depositing the said amount when his representation for his reinstatement was not properly considered ultimately he raised the dispute. Though due to some procedural irregularities this Tribunal in preliminary hearing in issue No. (i) held that the same was conducted prejudicial to the interest of the workman besides adjustment of his dues depositing the rest of the misappropriated amount is a clear case of his admission and estopped him to rebut the same which is a gross misconduct and deserves severe punishment.

8. *Issue No. (iii)*—The second party workman claims for reinstatement of his service with all back wages. His service has been terminated with effect from the 26th August 1987 basing on the finding of the enquiry officer regarding his misappropriation of funds of the society. In the case of M/s Lakshmiratan Cotton Mills Co. Ltd., *Vrs Its workmen*, reported in 1975 (31)FLR 31, the Hon'ble Supreme Court has held that severe punishment like termination of service requires reasonable opportunity to the workman to show cause against the proposed punishment. There is no material

on record to show that he has been served with a notice to show cause as to why the punishment of termination of service shall not be inflicted upon him. In the aforesaid background termination of service without notice is bad in law. However, it is open to the first party management to serve the notice as required under its Rules to impose any major punishment and to proceed in accordance with law in case he has not crossed the superannuation age. In the circumstances, the second party workman is not entitled to any back wages as claimed.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
27-8-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
27-8-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

J. DALANAYAK
Under-Secretary to Government